2013 IL App (2d) 120745-U
No. 2-12-0745
Order filed February 13, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DANIEL CHAPA, III,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellee,	)	
	)	
and	)	No. 09-D-395
	)	
	)	Honorable
NANCY L. CHAPA,	)	James J. Konetski and
	)	Neal W. Cerne,
Respondent-Appellant.	)	Judges, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: Nancy is not equitably estopped from challenging various provisions in the judgment of dissolution. However, her claims concerning child support, maintenance, property distribution, dissipation, and attorney fees fail. Affirmed.

¶ 2 Respondent, Nancy Chapa, appeals certain aspects of the judgment governing the dissolution of her marriage to petitioner, Daniel Chapa. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 We characterize the instant divorce proceedings as highly contentious. Multiple intermediate hearings and contempt proceedings were held. Nancy has discharged more than five attorneys,

though at least one change was due to her attorney's serious health condition. The trial was continued at least eight times. To whatever degree possible, however, we do not focus on the contentious nature of the proceedings and instead focus on those facts adduced at trial necessary to understand and evaluate the trial court's judgment.

¶ 5 A. The Trial

¶ 6 Nancy and Daniel married in 1989, in Texas. Each party worked in business. In 1991, Nancy earned between $50,000 and $60,000 and Daniel earned $80,000. Nancy ceased working in 1993, when she had their first child, Daniel IV. In 1996, the parties had a second child, Miranda. The parties moved seven times during their marriage, moving across states and eventually settling in Hinsdale. Nancy typically secured the housing and furnished the home while Daniel worked. The family lived a high lifestyle and the parties were generous with their children. They took the children to Disney World four or five times. The children skied and played travel soccer. They went to a summer camp costing $1,000 per week per child. Additionally, the family vacationed two to three times per year in places like Montana, Utah, New York, and London. The trips cost approximately $10,000 each. Earlier in the marriage, Daniel frequently gave Nancy expensive gifts, such as a mink coat and jewelry.

¶ 7 The parties donated approximately $7,000 per year to charity, and, in 2000 or 2001, they donated $20,000 to the Hinsdale Theater Foundation. Nancy enjoyed being involved in her community, and, in addition to raising her children, that is how she spent her time. In 2002, she joined the Hinsdale Historical Society. In 2005, she and several others filed a lawsuit relating to a commercial construction project in Hinsdale. She sought damages, but as of trial, the Hinsdale lawsuit had not yet been resolved.

¶ 8 The parties purchased the marital residence in 2002, paying $1,656,000 and taking out a mortgage of $1,000,000. The marital residence is located within walking distance of downtown Hinsdale and the train. It was built in 1888 and is on the national historic registry. It has over 6,000 square feet and has four true bedrooms, an office, and a playroom, as well as seven bathrooms. The parties made between $400,000 and $600,000 in improvements to the marital residence, including tearing down and rebuilding a garage, refinishing the third floor, and improving kitchens and bathrooms. The home costs at least $8,000 per month to maintain, including $5,200 in mortgage payments, $2,000 in taxes, and a $963 home equity line. As of trial, there was $875,000 remaining on the mortgage.

¶ 9 In 2006, Daniel took a chief-of-marketing job with Healthcare Finance Group (HFG) based in New York. Daniel commuted, and he maintained a separate residence in New York at a cost of $2,800 per month. As of trial, Daniel was the president of HFG. His base salary was $300,000 per year. In addition, he received an annual bonus at the discretion of the chief executive officer and board of directors. As of November 2011, Daniel had grossed $874,161.86 for the year. His 2010 bonus had been $625,000. His total earnings including bonuses for the years between 2007 and 2011 had steadily increased from approximately $500,000 to $900,000 per year.

¶ 10 When Daniel joined HFG, it was organized as a closely held corporation. In 2006, Daniel used $77,000 in marital funds to purchase 22,000 HFG stock shares at $3.50 per share. In 2007, Daniel owned the 22,000 HFG stock shares as well as 377,000 stock options. In January 2010, HFG converted from a closely held corporation to an LLC. In March 2010, Daniel converted his 22,000 stock shares to stock options. As a result, he then had 399,000 HFG stock options (referred to by the parties as "HFG option membership units").

¶ 11 Daniel submitted, through Exhibits 31 and 32, signed agreements between HFG and him reflecting the right to convert 22,000 stock shares to stock options and the right to purchase the additional 377,000 stock options. Daniel also submitted his 2010 federal income tax form, showing the $77,000 conversion of the 22,000 stock shares. Nancy had, of course, subpoenaed Daniel for these documents pertaining to the stock shares and options. She also twice subpoenaed HFG, which complied with her first request but not her second. Nancy sought to have HFG held in contempt of court for its failure to produce the second time around, but the trial court found that it did not have jurisdiction to find HFG, a New York company, in contempt in Illinois, where Nancy made an error in service to HFG. The document Nancy claims not to have received due to her inability to compel HFG is the HFG operating agreement.

¶ 12 In early 2009, Daniel initiated divorce proceedings. By March 2009, he had officially moved out of the marital residence in Hinsdale. During the pendency of the divorce, Daniel paid Nancy $2,600 per month ($1,200 bi-weekly) for her and the children's living expenses, plus $2,000 for Nancy's credit card, as well as all costs associated with the marital residence (mortgage, taxes, insurance, and utilities). Additionally, he paid for the children's tuition and extracurricular activities, and, as to Daniel, housing. As of trial, Daniel IV attended the University of Denver ($50,000 inclusive), and Miranda attended Fenwick High School in Oak Park ($12,500 non-inclusive).

¶ 13 Also during the pendency of the divorce, Nancy and Miranda continued to live in the marital residence. Miranda frequently walked to downtown Hinsdale to meet up with friends and go shopping. However, her friends did not live exclusively in Hinsdale. Miranda also had friends in Burr Ridge, Clarendon Hills, Darien, and Oak Park. The parties agreed that Miranda, a sophomore and a straight-A student, should remain at Fenwick High School. Nancy testified that Miranda

usually studied in her bedroom in the marital residence, and she believed moving would disrupt Miranda's studies.

¶ 14 B. The Judgment

¶ 15 On April 27, 2012, the trial court entered a judgment for dissolution of marriage. The court's stated intent was to equally divide the marital estate's assets (including savings accounts, investment accounts, retirement accounts, the cash-out value of a life-insurance policy, and any proceeds that might come from Nancy's Hinsdale lawsuit) and debts, with the exception of the marital residence. The proceeds from the sale of the marital residence would be split 60% to Nancy and 40% to Daniel. Additionally, the court linked its child support and maintenance order to the sale of the marital residence, with Daniel's obligations differing pre-sale and post-sale. Specifically, the court ordered:

> "The marital residence shall promptly be listed for sale and sold. The parties shall cooperate to accomplish the same. They shall select a listing price and agent(s). The property shall be sold 'as is' unless the parties agree to any maintenance, construction[,] or repair(s) in writing. Upon the closing of the sale of the residence[,] the 'net proceeds' shall be divided 60% to [Nancy] and 40% to [Daniel]. ***
>
> Until the closing on the sale of the marital residence[,] or unless modified prior thereto, [Daniel] shall pay the following:
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> 1. The mortgage on the marital residence;
>
> 2. The home equity loan;
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> 3. Real estate taxes and insurance on marital residence;
>
> 4. Utilities at the marital residence;

5. [Daniel] shall pay to [Nancy] $1,360 per 'base pay' check/period [or approximately $2,800 per month] representing approximately 20% of his net base income as and for child support. The payment shall continue until the closing on the sale of the marital residence, the minor's completion of high school[,] or her 19th birthday, whichever shall occur first[.] [Until closing on the sale of the marital residence, Daniel shall be solely responsible for reasonable expenses attributable to Daniel IV's attendance at the University of Denver and Miranda's attendance at Fenwick high school];

6. [Daniel] shall pay to [Nancy] $2,000 per 'base pay' check/pay period [or just over $4,000 per month] as and for maintenance. This amount shall be paid until closing on the sale of the marital residence ***.

7. [Nancy] shall have exclusive possession of the marital residence until the closing on the sale of same."

After the closing on the sale of the marital residence, Daniel would begin a 48-month term of support payments. During the term, Daniel would pay Nancy $3,400 per paycheck, or approximately $7,366 per month, representing approximately 50% of his base net income. In addition, Daniel would pay Nancy an amount equal to one-half of the net of his annual bonuses (and, if Daniel continued to earn in the neighborhood of $900,000 per year, Nancy's total support amount would be approximately $32,000 per month before adjustments for Nancy's taxes).[1]

¶ 16 As to the duration of the support term, the trial court stated:

[1] One-half of a $600,000 bonus divided by 12 is $25,000 per month from bonuses, plus $7,366 from base pay totals $32,366.

"If [Nancy] shall seek to review and or to extend the period of maintenance beyond 48 months, then her request to do so shall be based on the following conditions:

1. [She] must file a petition seeking to extend the maintenance payments no later than 30 days subsequent to the final payment due hereunder from [Daniel's] base pay.

2. The review shall be '*de novo*' pursuant to the criteria set forth in Section 504 of the [Act]. No proof of a 'substantial change in circumstances' is required.

3. During the period [Nancy] receives maintenance, she must use her best effort to become increasingly self supporting."

¶ 17 The trial court specifically declined to award payment under the classification of child support. The court explained that, given that Daniel would already be giving Nancy 50% of his net pay and bonuses, there was no need for him to pay an additional $3,000 per month in child support (representing the statutorily recommended 20% of Daniel's base net income). During the 48-month support term, the parties would be equally responsible for the children's respective tuition payments at their current schools. At the end of the term, Miranda would no longer be a minor. The court reserved the issue of Miranda's college expenses. Additionally, Daniel was to maintain a $1,000,000 life insurance policy to secure his support obligations.

¶ 18 As to the HFG options, the court stated:

"Each party shall be awarded 50% of the 399,000 HFG option membership units acquired during the marriage. To effectuate the division of the HFG option membership units, the parties shall act as follows:

1. [Daniel] shall regularly inform [Nancy] as to the status of the ability to exercise membership unit options as options vest and as they become available for sale;

2. [Daniel] shall assign options to [Nancy] to the extent permitted and he shall do so immediately when so permitted;

3. To the extent that [Daniel] is unable to assign options to [Nancy], he shall comply with any directive received from [Nancy] to sell any or all of her share of options when available for sale[;]

4. All costs associated with the exercise of the options shall be the responsibility of the party exercising the same[;]

5. As long as said options remain held solely in [Daniel's] name, the income tax consequences, if any, shall be paid by the parties at [Daniel's] then existing income tax rate."

¶ 19 The trial court found that each party dissipated marital assets. Daniel provided $33,876 in goods and funds to a paramour. Nancy spent an unaccounted-for $61,450 in state and federal tax refunds. Each party's dissipation would be subtracted from the otherwise equal division of marital property.

¶ 20 Finally, the trial court ruled on attorney fees, finding Daniel to have incurred $235,000 in fees and Nancy to have incurred $275,000 fees. The court characterized the fee payments as advances from the marital estate. Each party's fees would be subtracted from the otherwise equal division of marital property.

¶ 21 Following several post-judgment motions not at issue here, this appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Before reaching the merits of this appeal, we address Daniel's threshold argument that Nancy is equitably estopped from challenging the trial court's judgment because she accepted the following benefits: one-half the cash-out value of the life insurance policy (separate from the one maintained

for the children mentioned in the merits of the appeal) as well as child support and maintenance payments. We reject Daniel's argument. A party to a dissolution proceeding cannot claim estoppel based on the acceptance of benefits unless the acceptance of benefits put the appellee at a distinct disadvantage. *In re Marriage of Parr*, 103 Ill. App. 3d 199, 202 (1981). Daniel has not shown that Nancy's acceptance of child support and maintenance has put him at a distinct disadvantage; Nancy does not appeal her award of the cash-out value of the life insurance policy. The case cited by Daniel is inapposite. See *In re Marriage of Gryka*, 90 Ill. App. 3d 443, 449 (1980) (husband was estopped from challenging the *validity* of the divorce decree because he remarried).

¶ 24 We now turn to the merits of the appeal, where Nancy challenges the trial court's rulings of child support, maintenance, property division, dissipation, and attorney fees. For the reasons that follow, we reject Nancy's arguments.

¶ 25 A. Sale of Marital Residence

¶ 26 We choose to first address the sale of the marital residence. Although it is an aspect of the property distribution issue, it also controls child support and maintenance issues. Nancy contends that she and Miranda should have been allowed to live in the marital residence until Miranda graduates high school in two years. Nancy notes that the marital residence has been Miranda's home for nine years and that it has been a foundation for Miranda's social life. Miranda regularly walks into town, where she and her friends meet to go shopping. Nancy cites but does not discuss numerous cases for the proposition that, where possible, children should be "afforded continuity in their environment to reduce the emotional disruption caused by the separation of their parents." See, *e.g.*, *In re Marriage of Brenner*, 95 Ill. App. 3d 100, 102 (1981). Matters of property distribution

are reviewed according to the abuse-of-discretion standard. *In re Marriage of Cepek*, 230 Ill. App. 3d 1045, 1049-50 (1992).

¶ 27 We understand why Nancy would want to continue to raise Miranda in the marital residence. However, we cannot say that the trial court abused its discretion in ordering its sale. The evidence shows that, despite a move, Miranda will be able to stay in the same school and maintain friendships. There is no residency requirement for Miranda's private Oak Park school. Miranda's friends do not live exclusively in Hinsdale; they also live in Burr Ridge, Clarendon Hills, Darien, and Oak Park. Moreover, the desirability of keeping the children in the home is but one of many factors to be considered. *In re Marriage of Agazim*, 176 Ill. App. 3d 225, 236 (1988). Another factor, equally applicable here, is whether the judgment's finality allows for the parties to plan their futures without return to court. *Id.* Despite an equal split of high earnings, the trial court may have reasonably concluded that obligations from the marital residence would have been difficult to meet without further controversy and return to court. The marital residence costs approximately $8,000 per month to maintain. Daniel now maintains a residence in New York and the parties have substantial attorney fees to pay. The sale of the marital residence will free the parties of a major financial obligation and allow each to comfortably plan his or her future.

¶ 28 We affirm the order to sell and we direct the parties to cooperate with the sale of the marital residence.

¶ 29 B. Child Support and Maintenance

¶ 30 We next address Nancy's challenge to the trial court's child support and maintenance determinations, which focus on Daniel's post-sale obligations. Before doing so, we discuss the nature of the monthly support payment ordered by the court, anticipated to be $32,000 based on

Daniel's earning trend. Although the court's terminology may have been unclear, the 48-month "maintenance" award is better characterized as an unallocated family support payment. Unallocated support is considered maintenance for federal tax purposes; substantively, however, unallocated support is child support *and* maintenance. *In re Marriage of Kincaid*, 2012 IL App (3d) 110511, ¶ 25. We will not reverse a court's determination of child support or maintenance absent an abuse of discretion. *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 390 (2008)*; Einstein v. Nijim*, 358 Ill. App. 3d 263, 273 (2005).

¶ 31 1. Challenges to the Support Payment as Child Support

¶ 32 Nancy's challenges to the support payment as child support can be broken down to those challenging: (1) existence; (2) amount; and (3) statutory compliance. Because we characterize the $32,000 support payment as unallocated family support, we reject Nancy's argument that the trial court failed altogether to order Daniel to support his minor child after the sale of the marital residence. Clearly, we acknowledge that section 505(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) requires each parent to support his or her child. 750 ILCS 5/505(a) (West 2012). As to amount, we summarily reject Nancy's argument that the $32,000 monthly support payment will not satisfy Miranda's previous standard of living. Finally, as to statutory compliance, we reject Nancy's argument that, in violation of section 505(a)(2) of the Act, the trial court did not make a specific finding for its "downward" deviation from the statutory support guideline of 20% of one's income for one child. 750 ILCS 505(a)(2) (West 2012). The court's support award did not constitute a downward deviation but merely a deviation. In the face of the $32,000 award, already one-half of Daniel's earnings, the additional $3,000 representing 20% of Daniel's net base pay could certainly be considered excessive. Indeed, the trial court *did* specify its reasons for the deviation

from the guideline, explaining that the monthly support payment provided Nancy's household with sufficient income to support Miranda.

¶ 33 2. Challenges to the Support Payment as Maintenance

¶ 34 Nancy's challenges to the support payment as maintenance can be broken down to those challenging: (1) amount; (2) duration; and (3) miscellaneous. As to amount, Nancy argues that the trial court erred in awarding her "only $7,366" per month and that the marital lifestyle entitled her to "at least" $42,000 per month. This argument mischaracterizes the trial court order, and, for that reason, we reject it. The court did not award her "only $7,366" per month. Rather, as we have discussed, the court awarded Nancy $7,366 per month, plus one-half of Daniel's bonuses, amounting to an anticipated $32,000 per month (before taxes). Nancy does not set forth needs or costs totaling $42,000 per month. Rather, she asserts that figure to be one-half of Daniel's earnings, although we disagree with her math. Perhaps she anticipates a higher bonus amount. In any case, Nancy has already been awarded one-half of Daniel's earnings. Therefore, she has already received the amount she is asking. To whatever degree Nancy receives less than the anticipated $32,000 per month, it would only be because Daniel's bonus was lower than anticipated and he, too, would receive less.

¶ 35 Nancy next challenges the duration of the monthly award, arguing that she is entitled to permanent maintenance. We find this claim difficult to review because the trial court left open the option of extension at the end of the 48-month term. Again, the court stated:

> "If [Nancy] shall seek to review and or to extend the period of maintenance beyond 48 months, then her request to do so shall be based on the following conditions:
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> 1. [She] must file a petition seeking to extend the maintenance payments no later than 30 days subsequent to the final payment due hereunder from [Daniel's] base pay.

2. The review shall be '*de novo*' pursuant to the criteria set forth in Section 504 of the [Act]. No proof of a 'substantial change in circumstances' is required.

3. During the period [Nancy] receives maintenance, she must use her best effort to become increasingly self supporting."

Therefore, we do not yet know the duration of time during which Nancy will be receiving support. The court will re-evaluate Nancy's need for support upon her petition at the end of the term. Its decision will be made anew based on the factors set forth in section 504 of the Act (750 ILCS 5/504 (West 2012)), and, presumably, as mentioned in the court's third point, a major factor will be the degree to which Nancy improved her ability to support herself. Further review on this sub-issue is premature.

¶ 36 Finally, Nancy complains that: (1) the trial court did not order a retroactive support award; and (2) the $1,000,000 life insurance policy was insufficient to secure Daniel's support obligations. However, she forfeits these arguments by failing to cite case law addressing them. *In re Marriage of Strauss*, 183 Ill. App. 3d 424, 428 (1989); Ill. S. Ct. Rule 341(h)(7) (eff. July 1, 2008). In any case, as to the retroactive support, we note that Daniel did support Nancy during the period in question. During the pendency of the divorce, Daniel paid Nancy $2,600 per month for her and Miranda's living expenses, plus $2,000 toward her credit card. Daniel also paid all costs associated with the marital residence (mortgage, taxes, insurance, and utilities), Daniel IV's college costs, and Miranda's tuition and extracurricular fees. Nancy admits this elsewhere in her brief.

¶ 37 C. Property Award

¶ 38 Nancy next challenges the trial court's property award, arguing that it erred in: (1) awarding her only 50% of the marital estate; and (2) allocating the HFG options.[2] We will not reverse a trial court's property distribution unless it was an abuse of discretion. *Cepek*, 230 Ill. App. 3d at 1049-50.

¶ 39 1. Apportionment

¶ 40 Nancy argues that the trial court erred in failing to award her a greater portion of the marital estate. Nancy cites, but does not discuss in depth, several cases where the homemaker spouse was awarded more than 50% of the marital estate. See, *e.g.*, *In re Marriage of Thomas*, 239 Ill. App. 3d 992, 996 (1993) (wife awarded nearly two-thirds of the marital estate where she had no other sources of income); *In re Marriage of Scoville*, 233 Ill. App. 746, 759 (1992) (award of only 40% reversed); *In re Marriage of Orlando*, 218 Ill. App. 3d 312, 319-21 (1991) (wife awarded two-thirds of the marital estate where she was awarded less than 10% of the husband's income as maintenance); *In re Marriage of Hanson*, 170 Ill. App. 3d 298, 303 (1988) (wife awarded over two-thirds of the marital estate). These cases acknowledge that, "in a long term marriage, the source of the assets *** becomes less of a factor, and a spouse's role as the homemaker becomes greater." *Scoville*, 233 Ill. App. 3d at 758.

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[2] In the interest of thoroughness, we briefly address two stray, undeveloped arguments Nancy has included in her property section: the trial court erred in evaluating the parties' tax forms and in evaluating their debt. As to the first claim, Nancy provides no details beyond her bare assertion. As to the second claim, we deduce Nancy is referring to monies owed to her mental health counselor and to her racquetball club. These payments should have been made from the $4,600 per month Nancy was receiving throughout the divorce. There was no error on these points.

¶ 41 Here, however, Nancy *was* awarded more than 50% of the marital estate. The court divided the assets and debt equally, with the exception of the proceeds from the sale of the marital residence. Nancy received the greater share of this value. Additionally, Nancy was awarded 50% of Daniel's earnings for a 48-month period, which may be extended upon Nancy's petition and the court's reevaluation. See 750 ILCS 5/503(d) (10)(West 2007) (in apportioning the marital estate, the court shall consider whether the apportionment is in lieu of or in addition to maintenance). We find no abuse of discretion in the court's property apportionment.

¶ 42 2. HFG Stock

¶ 43 Nancy next challenges the trial court's award of the HFG stock options. Again, the court awarded Nancy one-half of the 399,000 HFG option membership units acquired during the marriage. Daniel is to keep Nancy apprised as the options become available for sale. Specifically, Nancy presents two somewhat conflicting arguments. The first is that Daniel did not actually convert the 22,000 stock shares to stock options, and, therefore, one-half of their $77,000 value should be available for her to cash out. The second is that she should not be forced to cash out or realize any of her HFG interest but should instead be able to share in any profit realized from the eventual sale of HFG. We reject each of these arguments as speculative, contradicted by the record, and, particularly as to the second argument, insufficiently briefed.

¶ 44 At the root of Nancy's first argument is her doubt that Daniel converted the 22,000 stock shares to stock options in a traditional, arms-length manner that truly prevented him from being able to buy them back immediately. Nancy thinks that Daniel fraudulently placed the stock shares out of the control of the marital estate and that HFG is holding them in trust for Daniel. Nancy believes that, if only she had HFG's operating agreement, she could prove this. Nancy alleges that she asked

for the operating agreement in a 2011 subpoena to HFG. The parties dispute this, Daniel pointing to the subpoena's rider, which does not request the operating agreement but requests all documents relating to the HFG stock shares and options. Daniel asserts that Nancy has already received these items through other discovery. The actual subpoena does not appear to be in the record, and Nancy does not point us to it (though we have found notice that it was sent, its answer, and its rider). In any case, as we have stated, the trial court declined to find HFG in contempt for failing to comply with the subpoena, because Nancy did not properly serve the out-of-state company.

¶ 45 We decline to address the contempt issue, which we find to be a red herring. Nancy's assertion that the sought-after HFG operating agreement would somehow disclose a fraudulent transfer of stock shares to stock options is speculative and contradicted by the existing record. See, *e.g.*, *Gonzalez v. Pollution Control Board*, 2011 IL App (1st) 093021, ¶ 43 (where City turned over documents customary for administrative citation proceedings, petitioners were not prejudiced by City's failure to produce certain notes, and petitioners' argument that the notes would have contained exculpatory evidence was speculative). The signed agreements between Daniel and HFG, Exhibits 31 and 32, set forth the rules for converting and purchasing the stock shares and options. Daniel's federal income tax forms reflect that he converted the stock shares to options. Any failure to produce an operating agreement, where Nancy received official documents directly pertaining to the stock shares and options, could not prejudice Nancy.

¶ 46 Alternatively, Nancy argues that, even if there really are 399,000 stock options (rather than 377,000 stock options and 22,000 stock shares held "in trust" for Daniel's special access), the trial court erred in ordering Nancy to exercise her options in order to realize her asset. Nancy contends that the trial court should have instead ordered that Nancy should realize one half of Daniel's future

profits when, at some future date, HFG is sold and merges into another company. Nancy fails to cite any case law to support such an approach as the preferred method of distribution, let alone that a different approach would constitute an abuse of discretion. *Strauss*, 183 Ill. App. 3d at 428; Ill. S. Ct. Rule 341(h)(7) (eff. June 1, 2008). Therefore, she has forfeited the argument.

¶ 47 D. Dissipation

¶ 48 Nancy next argues that the trial court erred in its determination that she dissipated assets in the amount of $61,450 and that Daniel only dissipated assets in the amount of $33,876. Dissipation is the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time when the marriage is undergoing irreconcilable breakdown. *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 375 (2008). Funds spent for legitimate family expenses and necessary and appropriate purposes do not constitute dissipation. *In re Marriage of Harding*, 189 Ill. App. 3d 663, 676 (1989). A party charged with dissipation must show with specific evidence how the suspect funds were spent. *In re Marriage of Hahn*, 266 Ill. App. 3d 168, 171 (1994). General and vague statements that the funds were spent on marital expenses or bills are inadequate to avoid a finding of dissipation. *In re Marriage of Adams*, 183 Ill. App. 3d 296, 301-02 (1989). The explanation given by a spouse charged with dissipation requires the trial court to assess credibility. *Id*. at 301. Dissipation is determined according to the particular facts of a given case. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006). A finding of dissipation will not be reversed unless it is against the manifest weight of the evidence. *Adams*, 183 Ill. App. 3d at 300.

¶ 49 Nancy admits that, in 2009, she used $61,450 from the 2008 tax refunds. However, she argues that she used the funds for living expenses because she was "not getting adequate support from Daniel and the court would give her no assistance." Nancy's claim that she was getting no

support from Daniel during the time in question is rebutted by the record. Daniel paid Nancy $2,600 per month for her and Miranda's living expenses, plus $2,000 toward her credit card. Daniel also paid all costs associated with the marital residence (mortgage, taxes, insurance, and utilities), Daniel IV's college costs, and Miranda's tuition and extracurricular fees. Nancy admits this elsewhere in her brief.

¶ 50 Nancy's reference to Exhibit 89 does not save her argument. In Exhibit 89, Nancy lists various expenses that she incurred during the time in question, but she presents no supporting documentation. See *Hahn*, 266 Ill. App. 3d at 171. Nancy does present what she calls a "back-up" to Exhibit 89 documenting activity on her bank and checking account for the period in question. However, it is difficult to tell from this "back-up" exhibit which, if any, of the funds came from the $61,450 refund. The monies are just as likely to have come from the $4,600 in support over and above payment for the mortgage and tuition. Nancy makes general claims that the funds went to allowable living expenses. However, she points to no specific evidence even tending to show that the trial court's ruling was against the manifest weight of the evidence. *Adams*, 183 Ill. App. 3d at 301.

¶ 51 Nancy contends that Daniel dissipated more than the $33,876 that the court found him to have spent on his paramour. She points to Exhibits 86 and 87, which list cash withdrawals that she alleges Daniel did not adequately explain. There are two problems with Nancy's argument: (1) most of these withdrawals occurred prior to the irreconcilable breakdown and came from joint accounts to which Nancy had access (*i.e.*, the monies could just as easily been withdrawn by her); and (2) the withdrawals occurring during and after the irreconcilable breakdown fit with the pattern of withdrawals prior thereto. The case law is clear that the dissipation period occurs during or after the

period of irreconcilable breakdown. *Adams*, 183 Ill. App. 3d at 301. Case law also supports the proposition that the continuation of a pattern of reasonable spending that occurred without complaint throughout the marriage does not constitute dissipation. *Id*. at 303 (husband's pattern of spending approximately 4% of his net earnings at a bar in the two-plus years preceding the divorce was not dissipation). Here, Exhibits 86 and 87 show that, beginning in 2005 or 2006 (as far back in time as the record goes), Daniel made weekly and, occasionally, bi-weekly cash withdrawals of $200. Beginning in 2007 through the date of the divorce, around the time when Daniel began earning more money with HFG and two years prior to the irreconcilable breakdown, these cash withdrawals increased to $300. Daniel testified, and the court found credible, that this money was used for taxis, car services, lunch, dinner, and allowance for the children. It was not error for the court to find that this pattern of withdrawing cash, approximating 2% of Daniel's gross earnings, did not constitute dissipation.[3] See *Id*. at 303.

¶ 52 E. Attorney Fees

¶ 53 Finally, Nancy argues that the trial court erred in not assessing her attorney fees against Daniel. Attorney fees are primarily the responsibility of the party who incurs them. *In re Marriage of Suriano and LaFeber*, 324 Ill. App. 3d 839, 852 (2001). However, the court may award attorney fees where one party lacks the financial ability to pay. *In re Marriage of Haas*, 215 Ill. App. 3d 959, 965 (1991). Financial inability exists where the payment of attorney fees would undermine that party's financial stability or strip that party of his or her means of support. *Id*. A party need not deplete savings or divest oneself of the awarded assets to enable the payment of attorney fees. *Head*

[3] $900,000 per year divided by 12 months in a year is $75,000 per month, and, if the monthly withdrawals approximate $1,500, that is 2% of $75,000.

v. Head, 168 Ill. App. 3d 697, 704 (1988). A trial court's refusal to award attorney fees will not be reversed absent an abuse of discretion. *In re Marriage of Powers*, 252 Ill. App. 3d 506, 514 (1993).

¶ 54 Here, each party incurred approximately $250,000 in attorney fees. Nancy received an equal portion of the marital assets (with the exception of the marital residence, the proceeds from which Nancy is to receive the *larger* share). Likewise, Nancy will receive 50% of Daniel's earnings, including bonuses, for the 48-month support term, the extension of which will be considered upon petition at the end of the term. Therefore, contrary to Nancy's assertions, the parties are in relatively equal position to pay their respective fees. See, *e.g.*, *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 996 (2011) (fee award inappropriate where the parties' financial situations were substantially similar after maintenance). We reject Nancy's request for a hearing to determine the precise amount of attorney fees in this case; any corrections as to amount would not change the determination that each party is in a relatively equal position to pay his or her own attorney fees. The court did not abuse its discretion in ordering that each party be responsible for his or her own attorney fees.[4]

¶ 55 III. CONCLUSION

¶ 56 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 57 Affirmed.

[4] Because Daniel does not seek attorney fees on appeal, we need not address arguments pertaining to allegations that Nancy, who went through at least five attorneys, was unduly litigious and raised frivolous claims.